

Dairy Industry Amendment Bill

Government Bill

As reported from the Primary Production Committee

Commentary

Recommendation

The Primary Production Committee has examined the Dairy Industry Amendment Bill and recommends that it be passed with the amendments shown.

Introduction

The Dairy Industry Amendment Bill amends the Dairy Industry Act 1952 (the Act). The purpose of the bill is to facilitate trade with foreign countries through the provision of a reputable system of official assurances. An official assurance is a statement to a foreign government that certain import requirements have been met.

The catalyst for the amendment is the need to action the European Union (EU) requirement that the issuing of EU Inward Monitoring Arrangement (IMA) Certificates for country-specific butter and cheese quotas be undertaken by a government agency. An IMA Certificate states that a consignment of product meets a detailed product description. In the past the New Zealand Dairy Board (the Board) issued IMA Certificates. From 1 July 2000, the Ministry of Agriculture and Forestry (MAF) will carry out this function.

The bill has four main features. First, the bill excludes liability for the Crown where official assurances have been granted in good faith. Second, it increases penalties for breaches of the Act. Third, it authorises the ministry to recover the costs of providing official assurances from the industry. Finally, it enables the ministry to establish an official assurance system and related compliance

programmes to ensure that dairy exports meet the requirements of importing countries.

Definition of “official assurance”

The New Zealand Law Society (Law Society) notes that a definition of “official assurance” is not included in the bill. We believe the meaning of “official assurance” is clearly and accurately conveyed in sections 26A and 32(1)(xa) and we recommend no change. These sections refer to “official assurances as to the compliance of dairy produce with the requirements of an importing country”.

Clause 3

New section 26A excludes the Crown from liability for official assurances given in good faith. In providing this degree of protection, the Board believes the clause undermines the credibility sought in the bill. The Board proposes the clause be amended to exempt the Crown from liability for official assurances given in good faith “and with reasonable care”. We agree and recommend that the clause be amended accordingly.

Clause 4

Clause 4 increases the maximum penalty for breaches of the Act from \$100 to \$5,000 for an individual, and \$20,000 for a body corporate. Under clause 4, it is also an offence to knowingly provide information required by the Act that is false.

The Law Society views the increased penalties as modest. However, we believe the penalties complement other incentives for compliance and are consistent with fines for similar offences under the Food Act 1981. Alongside the penalties, we consider MAF’s ability to withhold official assurances and the imposition of levies by importing countries if requirements are not met, are appropriate means of encouraging compliance. Therefore, we recommend no change.

Clause 5(2)

Consultation over assessment of costs

Clause 5(2) relates to cost recovery. Specifically, section 32(1)(y) authorises the range of charges that the ministry will impose for

official assurances. The Board and Kiwi Co-operative Dairies Limited are concerned that excessive hours could be charged for certain services. Both organisations want the provision broadened to include regular consultation on cost assessments.

MAF considers it would be difficult to provide accurate quotations on certain services until experience is gained with the new charging regime. However, once this occurs, MAF will be able to provide more precise cost and time assessments for these services.

At present there is no opportunity for clients to mitigate the impact of statutory charges. However, MAF have assured us that this is intended in the longer term and MAF will monitor and provide transparency in its charging regime. Therefore, we recommend no change.

New clause 5A: section 32A

We recommend the introduction of new clause 5A to make general provision for consultation. This clause takes into account submissions from the Law Society and Dairy Farmers of New Zealand. Specifically, section 32A provides for consultation before regulations are made. Subsection (1) requires the ministry's Director to consult with representatives of substantially affected persons and to report the results to the Minister. The consultation requirement does not apply if the minister considers the public interest requires urgency. Also, a failure to consult does not invalidate the regulations.

Other issues

Submitters raised three issues that were tangential to our consideration of the bill. These are:

- impact of proposed fees under the Act on small premises
- regulation of ice cream as dairy produce
- review of the Act

Impact of proposed fees on small premises

Under the Act, MAF will charge fees for services such as the approval of product safety programmes. Four submitters oppose the fees, describing them as onerous, particularly for small-scale producers.

Submitters request a more equitable charging regime that recognises the difference between small and large organisations in respect of production levels and compliance with technology standards and inspection. MAF acknowledges that compliance costs are likely to be higher for small operators than for larger operators. However, the proposed charges do not relate to IMA certification and do not depend on the cost recovery provision made in clause 5(2). Therefore they cannot be changed through amendments to the bill.

The issue raises wider policy concerns about how costs are apportioned. We are concerned the proposed fees may impede small players from participating in the dairy industry. Also, without defining what constitutes a “small” or “large” operation, we believe further consideration of a variable charging regime is constrained. We have written to the Minister of Agriculture expressing our concerns. We have also asked that he consider policy options to vary government charges in order to eliminate barriers to small business innovation.

Regulation of ice cream as dairy produce

The New Zealand Ice Cream Manufacturers Association (the Association) opposes the regulation of ice cream as dairy produce. The Association considers regulating ice cream as a “dairy product” at the manufacturing level is not necessary for food safety as ice cream is a low risk product.

The Association also contends that ice cream should be considered a “food” rather than a dairy product. A typical ice cream contains a variety of ingredients, of which only 22 percent is milk solids. The Association states that cream is not an essential component of ice cream and more manufacturers are using alternative substances such as vegetable oil to make ice cream products.

The Association proposes amending the Act and the Dairy Industry Regulations 1990 to remove ice cream from the definition of “dairy produce”. The Association also proposes using an alternative food safety regime, comprising Australia New Zealand Food Authority (ANZFA) Food Standards, the ice-cream industry’s code of practice and each individual company’s Product Safety Programme. The Association considers the combination of these measures will provide a comprehensive food safety regime that is suitable for export produce without the same level of compliance costs.

MAF advises that ice cream regulation is being addressed as part of the wider review of the Act and the food safety harmonisation project.

We have written to the Minister of Agriculture raising these matters and will follow up on information received.

Review of the Dairy Industry Act 1952

The Act is currently under review. The New Zealand Dairy Group and MAF consider the Act inadequate in terms of providing a comprehensive framework for food regulation in the modern dairy industry. We agree and consider the review of the Act may generate some solutions to cost recovery and ice cream regulation issues.

Conclusion

We unanimously support the passage of the bill.

Appendix

Committee process

The Dairy Industry Amendment Bill was referred to the Primary Production Committee on 6 April 2000. The closing date for submissions was 27 April 2000. We received and considered ten submissions from interested groups and individuals. We heard three submissions orally. Hearing evidence took one hour and three minutes and consideration took two hours and 24 minutes. We received advice from the Ministry of Agriculture and Forestry.

Committee membership

Damien O'Connor (Chairperson)
Shane Ardern
Georgina Beyer
Clayton Cosgrove
Ian Ewen-Street
Martin Gallagher
Phil Heatley
Gavan Herlihy (Deputy Chairperson)
Hon Tariana Turia
R Doug Woolerton

Key to symbols used in reprinted bill

As reported from a select committee

Struck out (unanimous)

Subject to this Act,

Text struck out unanimously

New (unanimous)

Subject to this Act,

Text inserted unanimously

(Subject to this Act,)

Words struck out unanimously

Subject to this Act,

Words inserted unanimously

Note: This bill has been reformatted in accordance with the resolution of the House of 22 December 1999.

Hon Jim Sutton

Dairy Industry Amendment Bill

Government Bill

Contents

1	Title	5A	New section 32A inserted
2	Commencement	32A	Consultation before making of regulations
3	New section 26A inserted 26A No Crown liability	6	Consequential amendments to Dairy Industry Restructuring Act 1999
4	General penalty for breaches of Act		
5	Regulations		

The Parliament of New Zealand enacts as follows:

1 Title

- (1) This Act is the Dairy Industry Amendment Act **2000**.
- (2) In this Act, the Dairy Industry Act 1952¹ is called “the principal Act”.
- ¹ RS Vol 38 p 581

5

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

3 New section 26A inserted

The principal Act is amended by inserting, after section 26, the following section:

10

“26A No Crown liability

The Crown is not liable to any person in respect of the provision of any official assurances given in good faith and with reasonable care as to the compliance of dairy produce with the requirements of an importing country.”

15

4 General penalty for breaches of Act

- (1) Section 31(1) of the principal Act is amended by omitting the expression “\$100”, and substituting the words “\$5,000 in the case of a natural person, and \$20,000 in the case of a body corporate.”.

20

- (2) Section 31(1) of the principal Act is amended by repealing paragraph (f), and substituting the following paragraph:
- “(f) makes any statement required by this Act, or gives any information required by this Act, knowing it to be false in any material particular; or”.
- 5
- 5 Regulations**
- (1) Section 32(1) of the principal Act is amended by inserting, after paragraph (x), the following heading and paragraphs:
- “Miscellaneous*
- “(xa) providing for a system for the provision of official assurances as to the compliance of dairy produce with the requirements of an importing country, including the withholding of official assurances if the applicant is not entitled to export the produce: 10
- “(xaa) requiring persons who are involved in the manufacturing, storage, testing, or exporting of dairy produce destined for export to have and comply with an approved compliance programme, the purposes of which are to ensure that dairy produce destined for export meets the requirements of an importing country and that official assurances are accurate: 15
- “(xab) prescribing the matters that must be provided for in a compliance programme:”.
- (2) Section 32(1) of the principal Act is amended by repealing paragraph (y), and substituting the following paragraph: 25
- “(y) prescribing ((*after consultation with the industry*)) matters in respect of which costs are recoverable under this Act, the amounts of those costs or the method by which they are to be assessed, and the persons liable for payment of the costs:”.
- 30
- (3) Section 32(1)(bb) of the principal Act is amended by omitting the expression “\$100”, and substituting the words “\$5,000 in the case of a natural person, and \$20,000 in the case of a body corporate,”.

New (unanimous)**5A New section 32A inserted**

The principal Act is amended by inserting, after section 32, the following section:

- “32A Consultation before making of regulations** 5
- “(1) Before making any recommendation for the purposes of section 32, the Director must—**
- “(a) do everything reasonably practicable on his or her part to consult with representatives of persons likely to be substantially affected by the regulations; and** 10
- “(b) advise the Minister of the results of any such consultation.**
- “(2) The Minister must take into account the results of any consultation.**
- “(3) Subsection (1) does not apply in respect of any regulation if the Minister considers it desirable in the public interest that the regulation be made urgently.** 15
- “(4) A failure to comply with subsection (1) does not affect the validity of any regulation made under this Act.”**

6 Consequential amendments to Dairy Industry Restructuring Act 1999 20

- (1) The Dairy Industry Restructuring Act 1999 is amended by omitting from section 1(2)(b) the expression “paragraphs (xa)”, and substituting the expression “paragraphs (xb)”.
- (2) The Dairy Industry Restructuring Act 1999 is amended— 25
- (a) by repealing so much of Schedule 5 as relates to sections 26A, 31(1), 32(1)(xa), and 32(1)(xd)(v) of the principal Act:

Struck out (unanimous)

- (b) by omitting from section 32(1)(xb) in Schedule 5 under the item relating to the principal Act the expression “28”, and substituting the expression “26”. 30

New (unanimous)

- (b) by repealing section 32(1)(xb) of Schedule 5 under the item relating to the principal Act, and substituting the following paragraph:
- “(xb) providing for the registration of exporters of dairy produce under section 26, including providing for exemptions from registration requirements:” 5
-

Dairy Industry Amendment

Legislative history

3 April 2000

Introduction (Bill 13-1)

6 April 2000

First reading and referral to Primary Production Committee
